

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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FM HOLDINGS, LLC f/k/a  
FORWARDMARKET, LLC,

Plaintiff,

v.

BILL MAHONEY and  
STEPHEN GREGORIO,

Defendants.

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Civ. No. 05-11400-MLW

**JOINT MOTION TO STAY ALL PROCEEDINGS  
AND FOR A STATUS CONFERENCE**

The parties respectfully move this Court (i) to stay all proceedings in this action for 120 days, pending the resolution of newly-arisen insurance coverage issues and (ii) to hold a status conference to address the status of the case schedule in light of such issues and to reschedule the date of trial. As grounds for this motion, the parties state the following:

This case was originally filed on December 20, 2004.<sup>1</sup> By letter dated January 26, 2005, counsel for Defendants notified National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") of the claim and asserted coverage under the Directors, Officers and Private Company Liability Insurance Policy (the "Policy"), which was held by Defendants' former employer, Excelergy Corporation ("Excelergy"), and under which Defendants are insureds. By letter dated February 16, 2005, National Union acknowledged potential coverage and agreed to defend the action subject to a reservation of rights.

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<sup>1</sup> The case was filed in Texas state court but was subsequently removed to the District of Northern Texas and transferred to this Court by order dated July 1, 2005.

On January 25, 2007, counsel for Defendants received a letter from counsel for AIG Domestic Claims, Inc. ("AIGDC") on behalf of National Union stating that National Union was amending its prior position and declining coverage under the Policy for Defendants in this action. Counsel for AIGDC contends in the letter that a provision in the Policy excludes coverage for an action brought by any security holder of Excelergy and that the exclusion applies in this case because Plaintiff FM Holdings, LLC is such a security holder. The February 16, 2005 letter made no mention of such an exclusion, and Defendants likely will dispute AIGDC's position.

Pursuant to the modified Scheduling Order agreed to by the parties, discovery in this case is to be completed by February 28, 2007 and trial is scheduled to commence on April 16, 2007. Given the proximity of these deadlines and the obvious implications of the coverage issues on discovery and pretrial proceedings, as well as on potential settlement negotiations, the parties believe that a limited stay of proceedings pending clarification and resolution of the issues is warranted. Accordingly, the parties respectfully request that the Court stay proceedings for 120 days, at the conclusion of which the parties shall report to the Court on the status of the coverage issues. In addition, the parties respectfully request that the Court set a status conference to reset dates in its Scheduling Order, including a date for trial to commence, for dates following the stay.

Dated: February 6, 2007

Plaintiff FM Holdings, LLC  
By its attorneys,

Defendants Bill Mahoney and  
Stephen Gregorio  
By their attorneys,

/s/ Sanford F. Remz

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